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Message Text

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PAGE 01 STATE 292222

44
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E.O. 11652: N/A

TAGS: OCLR, TGEN, BR

SUBJECT: GOB REMINDER ON RESEARCH VESSEL CLEARANCE PROCEDURES

REF: BRASILIA 9373

1. DEPT APPRECIATES THE REMINDER CONCERNING COMPLIANCE WITH BRAZIL DECREE 63.164 OF AUG 26, 1968 AND EMBASSY'S CONCERN THAT PROBLEM DOES NOT BECOME WORSE. DEPT CONSIDERS PROBLEM HAS BEEN AT LOW EBB RECENTLY, WHICH IN LARGE PART CAN BE ATTRIBUTED TO EMBASSY'S EFFORTS TO KEEP CLEARANCE PROCEDURES FUNCTIONING SMOOTHLY. HOWEVER, USG DOES NOT REPEAT NOT RECOGNIZE ALL RIGHTS CLAIMED BY GOB, AND US POSITION MUST BE PRESERVED. MOREOVER, DEPT CONCERNED THAT GOB HAS CHOSEN TO FORMALIZE COMPLAINT OVER INCIDENT IN WHICH USG WAS NOT REPEAT NOT INVOLVED AND ACCORDINGLY FEELS MUST RESPOND TO GOB NOTE (BUT SEE CAVEAT IN PARA 5).
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PAGE 02 STATE 292222

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2. USG DOES NOT CONTROL OPERATIONS OF US FLAG VES-
SELS ON HIGH SEAS AND IN FOREIGN WATERS UNLESS VESSEL
IS IN VIOLATION OF US LAW, UNDER CONTRACTUAL RELATION-
SHIP TO USG, OR OWNED OR CHARTERED BY USG. AT TIMES
DEPT MAY SEEK TO INFLUENCE VESSEL OPERATORS FOR FOREIGN

POLICY OR OTHER REASONS, BUT SELDOM IS IN A POSITION
TO FORCE COMPLIANCE. USG USUALLY DOES NOT BECOME IN-
VOLVED IN OBTAINING CLEARANCES FOR COMMERCIAL R/V'S SUCH
AS WESTERN REEF, WHICH WOULD NORMALLY OBTAIN CLEARANCE
AS PART OF THEIR BUSINESS OPERATIONS. MOST THAT
GENERALLY WOULD BE DONE IS PROVIDE ADVICE TO COMMERCIAL
R/V OPERATORS ON CLEARANCE PROCEDURES, AND EVEN THIS IS
NOT DONE FREQUENTLY SINCE THEY GENERALLY HAVE INFO AND
ACCESS THROUGH LOCAL ASSOCIATES, AS PETROBRAS IN THIS
CASE. AS FAR AS DEPT AWARE, USG HAD NO PART WHATSOEVER
IN REFERENCED CASE.

3. USG RECOGNIZES COASTAL STATE JURISDICTION OVER ALL
RESEARCH WITHIN 3 NAUTICAL MILE TERRITORIAL SEA, FISH-
ERIES RESEARCH WITHIN 12 NM OF COAST, AND CONTINENTAL
SHELF RESEARCH TO EXTENT OF CONTINENTAL SHELF JURISDIC-
TION UNDER 1958 CONVENTION. HOWEVER, USG CONSIDERS
THAT CONTINENTAL SHELF RESEARCH MUST BE BOTH "CONCERNING"
THE SHELF AND "UNDERTAKEN THERE" UNDER 1958 CONVENTION
CRITERIA; I.E., MUST BE IN PHYSICAL CONTACT WITH SHELF.
THUS USG DOES NOT CONSIDER THAT SEISMIC WORK REQUIRES
CLEARANCE BEYOND 3 NM. THUS, AT APPROXIMATELY 82 NM
OFF BRAZILIAN COAST AT A DEPTH OF 66 METERS, INCIDENT
OCCURRED ON HIGH SEAS IN VIEW OF USG AND WHILE CLEARLY
OVER BRAZILIAN SHELF RESEARCH WAS OF NATURE USG DOES
NOT CONSIDER REQUIRES CLEARANCE (UNLESS THERE WAS
SOMETHING MORE THAN APPEARS FROM REFTEL). THUS NOT
ONLY DID USG NOT OBTAIN CLEARANCE FOR WESTERN REEF'S
RESEARCH, IT WOULD NOT HAVE SOUGHT IT IF ASKED.

4. WHILE USG DOES ACCEPT MOST FEATURES OF BRAZILIAN
DECREE, IT CANNOT ACCEPT IT COMPLETELY ON ITS FACE.
FOR EXAMPLE, USG IS GENERALLY NOT IN A POSITION TO
PROVIDE ASSURANCES THAT LOCAL LAWS WILL BE UPHELD, BUT
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PROCEDURE HAS BEEN EVOLVED UNDER WHICH OPERATOR DIRECTLY
PROVIDES ASSURANCES. IN CASE OF THE 180 DAY ADVANCE
NOTICE REQUIREMENT, THE USG HAS NEVER ACCEPTED THIS AS
REASONABLE, AND WHILE IT MAY MEET THIS DEADLINE IN SOME
INSTANCES IT WILL NOT REPEAT NOT DO SO IN ALL INSTANCES
AND AS MATTER OF POLICY WILL NOT ACCEPT 180 DAY REQUIRE-
MENT AS LEGITIMATE REQUIREMENT. NOTICE REQUIREMENT IS
ONE FEATURE OF SCIENCE ARTICLES CURRENTLY UNDER NEGOTIA-

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TION IN LOS CONFERENCE. REVISED SINGLE NEGOTIATING
TEXT LOOKS TO FOUR MONTH NOTICE, BUT THIS STILL UNDER
DEBATE. AS LONG AS SUBJECT IS UNDER NEGOTIATION, USG
WILL NOT FORMALLY ACCEPT THAT MORE THAN 2 TO 3 MONTH
NOTICE IS REASONABLE OR REQUIRED AND THAT EVEN LESS
IS POSSIBLE IN EXTENUATING CIRCUMSTANCES. NEVERTHELESS,

IN EACH PARTICULAR CASE, WE WILL TRY TO WORK SOMETHING
OUT SO THAT US RESEARCH IS NOT HAMPERED OFF BRAZILIAN
COAST WHILE US LEGAL AND POLICY POSITIONS ARE MAINTAINED.

5. NORMALLY, DEPT WOULD RECOMMEND STRONG NOTE TO FOREIGN
MINISTRY STATING THAT PETROBRAS MUST ASSUME FULL
RESPONSIBILITY FOR INFORMING NAVY AND/OR FOREIGN MINISTRY
OF SCHEDULE CHANGES FOR THIS RESEARCH. HOWEVER, DEPT
IS CONCERNED THAT BRAZILIAN NOTE MAY RESULT FROM CON-
FLICT WITHIN GOB BETWEEN PETROBRAS AND NAVY OVER CONTROL
OF OCEAN RESEARCH. OVER PAST FEW YEARS DEPT HAS RE-
CEIVED INDICATIONS THAT PETROBRAS, WITH SOME SUPPORT
FROM FOREIGN MINISTRY, HAS MODERATED PREVIOUS NAVY HARD
LINE AGAINST US RESEARCH VESSELS OPERATING IN BRAZILIAN
WATERS. IF INDICATIONS ARE CORRECT, GOB NOTE MAY
REPRESENT NAVY EFFORT TO EMBARRASS PETROBRAS, AND PER-
HAPS TO INDICATE TO OTHER PARTS OF GOB THAT PETROBRAS
IS NOT COMPETENT TO COORDINATE OPERATIONS OF US RESEARCH
VESSELS OFF BRAZILIAN COAST. DEPT WOULD ALSO VERY MUCH
APPRECIATE ANY ADDITIONAL INFORMATION WHICH EMBASSY
COULD PROVIDE WITH RESPECT TO PETROBRAS-NAVY RELATION-
SHIP, PARTICULARLY WITH RESPECT TO OCEAN RESEARCH.
FOLLOWING DRAFT NOTE THEREFORE IS INTENDED TO MAKE IT
CLEAR TO GOB THAT USG DOES NOT ACCEPT RESPONSIBILITY
FOR INCIDENT, WHILE AT THE SAME TIME IT DOES NOT PLACE
PETROBRAS IN AN UNNECESSARILY COMPROMISING SITUATION.
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IF RESERVATIONS EXIST CONCERNING NOTE, PLEASE ADDRESS
COMMENTS/RECOMMENDATIONS TO DEPT BEFORE FORWARDING.

6. COMPLIMENTARY OPENING...

THE GOVERNMENT OF THE UNITED STATES DOES NOT ACCEPT
RESPONSIBILITY CONCERNING THE INCIDENT INVOLVING THE
RESEARCH VESSEL "WESTERN REEF", OPERATED BY THE WESTERN
GEOPHYSICAL COMPANY AND UNDER CONTRACT TO PETROBRAS.
PETROBRAS OR WESTERN GEOPHYSICAL SUBMITTED THE CLEARANCE
REQUEST DIRECTLY TO THE GOB WITHOUT INFORMING THE USG.
COMPLIANCE WITH THE APPLICABLE BRAZILIAN DECREES AND
OTHER CONDITIONS SHOULD LIE SOLELY WITH THE REQUESTING
PARTIES. THE USG HAD NO PART IN THE CLEARANCE PROCESS
AND HAD NO PRIOR KNOWLEDGE OF THE RESEARCH PROGRAM.

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THE USG USUALLY DOES NOT BECOME INVOLVED IN OBTAINING CLEARANCES FOR COMMERCIAL RESEARCH VESSELS SUCH AS "WESTERN REEF", WHICH NORMALLY OBTAIN CLEARANCE AS PART OF THEIR BUSINESS OPERATIONS. COMMERCIAL RESEARCH VESSEL OPERATORS ARE PROVIDED WITH ADVICE, UPON REQUEST, ON CLEARANCE PROCEDURES AND GENERAL INFORMATION

CONCERNING FOREIGN RESEARCH REQUIREMENTS. HOWEVER, USUALLY THIS IS NOT REQUIRED BECAUSE THE OPERATOR OBTAINS THE NECESSARY INFORMATION THROUGH THEIR LOCAL ASSOCIATES.

CONCERNING COMPLIANCE WITH BRAZIL DECREE 63.164 OF AUGUST 26, 1968, THE US DOES ACCEPT MOST FEATURES AND APPRECIATES BRAZIL'S CONCERN FOR THE CONDUCT OF SCIENTIFIC RESEARCH OFF ITS COASTS. THE PROPER UTILIZATION OF COASTAL AREAS IS ALSO OF PRIME CONCERN TO THE US. PLANNING SCIENTIFIC RESEARCH PROGRAMS IS OFTEN DIFFICULT AND RESULTS IN LAST MINUTE SCHEDULE CHANGES AND MODIFIED RESEARCH PROGRAMS. FOR THIS REASON THE US HAS STRESSED THE IMPORTANCE OF THE BRAZILIAN DECREES TO US RESEARCHERS AND WILL MAKE EVERY EFFORT TO COMPLY WITH THE APPROPRIATE REQUIREMENTS. ROBINSON

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